

HOUSE BILL NO. 580
INTRODUCED BY R. BITNEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE PUBLIC SERVICE COMMISSION WITH EXPEDITED COMPLAINT AUTHORITY FOR INTERCONNECTION AND EXCHANGE ACCESS DISPUTES; PROVIDING AN EXPEDITED COMPLAINT PROCESS AND PROCEDURES; AMENDING SECTION 69-3-832, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-832, MCA, is amended to read:

"69-3-832. Interconnection -- jurisdiction. In addition to the authority granted to the commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the purposes of implementing 69-3-831, 69-3-833 through 69-3-839, sections 2 and 3, and this section, over all telecommunications carriers."

NEW SECTION. **Section 2. Expedited complaint proceeding -- commission authority.** (1) The commission may conduct expedited complaint proceedings involving interconnection arrangements that include but are not limited to exchange access services between telecommunications carriers.

(2) The provisions of the Montana Administrative Procedure Act do not apply to petitions for an expedited complaint proceeding under [section 3] and this section.

NEW SECTION. **Section 3. Expedited complaint proceeding -- procedure.** (1) (a) A party that petitions the commission for an expedited complaint proceeding shall file with the commission, at the same time as it submits the petition, the following:

(i) a statement that the petitioner has attempted in good faith to resolve the petitioner's disagreement with the respondent prior to petitioning the commission to initiate an expedited complaint proceeding;

(ii) a description of facts, including relevant documentation, of the issues in dispute and the position of each of the parties with respect to those issues; and

(iii) a statement that the petitioner has informed the respondent of the petitioner's intent to file a petition for expedited complaint proceeding at least 10 days prior to filing the petition with the commission.

(b) The petitioner shall provide a copy of the petition and any associated documentation to the other

party or parties not later than the day on which the commission receives the petition.

(c) The commission shall limit its consideration during an expedited complaint proceeding to those issues set forth by the parties in the petition and the response to the petition.

(2) A nonpetitioning party may respond to the other party's petition and provide any additional information within 25 days after the commission receives the petition.

(3) (a) The commission may appoint a hearings examiner, who shall file with the commission a proposed decision within the time set by order of the commission.

(b) (i) On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall include the affidavit or motion as a part of the record in the case.

(ii) The affidavit for disqualification must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not more than 10 days after the date of the appointment of the hearings examiner.

(iii) The commission may disqualify the hearings examiner and appoint another hearings examiner.

(4) Participation in the expedited complaint proceeding must be limited to the petitioning party, named respondents, and the Montana consumer counsel.

(5) Unless otherwise agreed to by the parties, the commission or the hearings examiner shall, within 10 days of the filing of the petition, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the petition. The schedule must include discovery deadlines and a hearing date.

(6) (a) The hearing must be conducted pursuant to the Montana Rules of Evidence and the parties:

(i) are entitled to be heard;

(ii) may present evidence material to the issues; and

(iii) may cross-examine witnesses appearing at the hearing.

(b) Parties must be allowed to conduct discovery pursuant to the schedule determined by the hearings examiner or the commission, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(7) The commission or the hearings examiner may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being heard and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission or the hearings examiner shall

regulate the course of the hearing and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues.

(8) The commission shall issue a final order on the petition not later than 120 days from the date that the petition for expedited complaint proceeding was filed with the commission.

(9) If the hearings examiner becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(10) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an expedited complaint proceeding, after issuance of notice of hearing, may not communicate with any party or party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

(11) As part of its final order, the commission may order relief that is justified under the circumstances. The commission may order the payment of monetary damages, by one party or parties to another party or parties, not to exceed \$10,000.

NEW SECTION. **Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 2 and 3].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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